

United States Serial No. 10/706,920
Response Dated May 17, 2005

Page 10 of 14

REMARKS

The undersigned gratefully acknowledges the Examiner's efforts to date and hereby responds fully to the outstanding office action.

With respect to section 1 of the OA, the first page of the specification has been amended to list the issued patent number.

With respect to section 3 of the OA, the abstract has been amended.

With respect to 4 of the OA, claims 10-11 have been amended to provide the proper antecedent basis. Claim 1 has also been amended to correct a grammatical error.

Regarding the double patenting rejection in section 5 of the Official Action, we do not agree with the assertions made. However, in order to expedite allowance, we enclose a Terminal Disclaimer to overcome the rejection, without prejudice.

With respect to section 6 of the OA - the examiner's presumption is correct.

With respect to section 7 of the OA, claims 1, 3-15 and 20-23 are rejected under 35 USC 103(a) as being unpatentable over Sandesara (US 5,179,548) in view of Yamasaki et al (5, 909,175). With respect, the OA has simply failed to establish a *prima facie* case of obviousness.

We do not see how the Sandesara reference (US 5,179,548) is relevant. As stated in the first paragraph of the Sandesara summary, at Column 2, lines 34-41:

My invention obviates the shortcomings and deficiencies of conventional bidirectional ring networks by employing crossconnect nodes to partition this network into independent segments. The *crossconnect nodes interconnect* the network segments at the subchannel level *such that a logical ring structure is preserved* and network survivability and other attributes of a ring network are maintained. (emphasis added)

United States Serial No. 10/706,920
Response Dated May 17, 2005

Page 11 of 14

Consequently, it simply does not teach or suggest the claimed invention. Indeed, it does not teach or suggest any of the claim limitations of claim 1 - which is not surprising, as it is trying to solve a completely different problem.

We reproduce claim 1 (as amended) below - with illustrative emphasis added to highlight some of the elements simply not taught or suggested by Sandesara (or at least the cited passages therein):

1. A gateway for assisting in delivery of a communications service *between a first ring and a second ring*, comprising:

- a switching entity operative to provide *controllable consumption of inter-ring bandwidth between the first and second rings*;
- a control entity operative to *monitor a status of a remote gateway* which delivers the communications service between the first and second rings;
- the control entity being responsive to observation of a non-failure status of the *remote gateway to maintain non-consumption of inter-ring bandwidth by the switching entity*;
- the control entity being *responsive to occurrence of a failure of the remote gateway to cause consumption of inter-ring bandwidth by the switching entity* for delivery of the communications service between the first and second rings.

The following passage is relied on for rejecting claim 1:

Unidirectional and bidirectional self-healing networks also differ in the survivability technique and number of protection links required to provide protection capability in the event of a break in the transmission link or a node failure. (col 4, lines 17-21)

With respect, this passage simply does not teach or suggest: a switching entity operative to provide *controllable consumption of inter-ring bandwidth between the first and second rings*.

Similarly, the following passage is relied on for rejecting the rest of the claim, and is equally inapplicable:

Each segment is terminated at both ends by crossconnect nodes. Crossconnect nodes interconnect incoming subchannels from one segment to outgoing subchannels of one of a plurality of segments such that interconnected subchannels are configured as logical rings. The assigned interconnection of subchannels between segments at a crossconnect node may be static and hard wired into the crossconnect node, or a management node can dynamically provide interconnection assignments. The crossconnect node also has loop-back capabilities for switching working links onto protection links to loop around a network failure occurring adjacent to the crossconnect node. (col 2, lines 1-63).

Without limiting the generality of the foregoing, Sandesara (and especially these passages) simply does not teach or suggest a gateway, which along with a remote gateway, controls consumption of inter-ring bandwidth between first and second rings.

Furthermore Yamakasi does not teach monitoring a status of a remote gateway. It teaches a conventional matched node arrangement as discussed in the background section of the present application (with reference to Figure 1). Furthermore, the cited passage discusses monitoring an alarm on the line (see col 2, lines 35-59), and does not teach or suggest monitoring for the failure of a remote gateway.

For the Patent Office to combine references in an obviousness analysis, the Patent Office must do two things. First, the Patent Office must articulate a motivation to combine the references, and second, the Patent Office must support the articulated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994,999 (Fed. Cir. 1999). While the range of sources for the motivation is broad, the range of available sources does not diminish the requirement for actual evidence. *Id.* Once the Patent Office has properly combined the references, to establish *prima facie* obviousness, the Patent Office must still show where each and every claim element is shown. MPEP §2143.03.

Contrary to the assertions made in the Office Action rejecting the claims, Applicants respectfully submit that no proper motivation to combine appears to exist. Further, any combination of the two references fails to result in the present claimed invention for the reasons mentioned above. Consequently, the official action has failed to establish a *prima facie* case of obviousness. Similar arguments apply for the other

United States Serial No. 10/706,920
Response Dated May 17, 2005

Page 13 of 13

rejected claims. Consequently, the claims are patentable and withdrawal of the rejections are requested.

Respectfully submitted,

DE BOER, Evert, et al

By: 

JEFF MEASURES

Reg. No. 40,272

Borden Ladner Gervais LLP

World Exchange Plaza

100 Queen Street, Suite 1100

Ottawa, ON K1P 1J9

CANADA

Tel: (613) 237-5160

Fax: (613) 787-3558

E-mail: ipinfo@blgcanada.com

JMM/seg